

The Honorable Mary K. Dimke

Brian C. Augenthaler, WSBA #44022
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UNITED STATES DISTRICT COURT
EASTERN OF WASHINGTON
AT SPOKANE

The Estate of ROBERT BRADLEY,
deceased; KESHIA HAHN, as
Personal Representative of the Estate;
R.Par.B., minor child of ROBERT
BRADLEY, deceased, by and through
his legal guardian, KESHIA HAHN;
AND R.Pat.B., minor child of
ROBERT BRADLEY, deceased, by
and through his legal guardian,
KESHIA HAHN.

Plaintiffs,

V.

CITY OF SPOKANE, a political subdivision of the State of Washington; TREVOR WALKER, individually and in his official capacity; CHRISTOPHER JOHNSON, individually and in his official capacity; AND JOHN and JANE DOES 1-40, individually and in their official capacities, inclusive,

Defendants.

No. 2:24-cv-00189-MKD

DEFENDANT CITY OF
SPOKANE'S REPLY TO
PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO
RELEASE VAN TO OWNER

NOTED FOR: October 11, 2024

HEARING DATE: December 3, 2024, at 9:00 a.m.

DEFENDANT CITY OF SPOKANE'S REPLY TO
PLAINTIFFS' OPPOSITION TO DEFENDANT'S
MOTION TO RELEASE VAN TO OWNER - 1
2:24-cv-00189-MKD

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1 It appears there are three available options for the disposition of the van:

2 1. Plaintiffs (or their counsel) can buy the van from its owner, Gesa Credit

3 Union, and they can use it or preserve it as they deem fit;

4 2. Plaintiffs and their experts can inspect the van again between now and

5 the time the Court rules on this Motion (no further inspections has been

6 requested since this Motion was filed)¹;

7 3. The Court can deny this Motion, and the van will continue to depreciate

8 and cause logistical problems for Kevin Berry and evidence technicians

9 at the Property Evidence Facility, all the way through trial in November

10 2025.

11

12 Assuming Plaintiffs are not interested in purchasing the van or lack the

13 funds to do that, the City respectfully requests the Court consider some

14 version of Option No. 2 as a possible compromise. The Court could establish

15 deadline for any further inspections so that the van can be released to Gesa by

16 a date certain, preferably long before the November 2025 trial date, at which

17 point the van will be over four years old, having sat undriven for well over

18

19

20 ¹ Neither by Plaintiffs in this lawsuit, or by the Plaintiff in in the McLaughlin

21 matter (No. 2:23-CV-00286-MKD), whose counsel was provided a copy of the

22 City's Motion.

half its existence.

1 Of Plaintiffs' Response arguments, the most persuasive is that this
 2 Motion should be denied so the jury can view the van at trial. Option No. 1
 3 could serve this end (buying it from Gesa). Option No. 3 would also serve this
 4 purpose, but it would rely on the Court authorizing a viewing of the van at
 5 trial, over the City's objection. This would take the better part of a full trial
 6 day and would require the Court to arrange transportation for the jury and the
 7 Court (including the court reporter).² The potential for a viewing does not
 8 outweigh Gesa's ownership rights nor the operational concerns expressed by
 9 Mr. Berry, especially when the van will be presented to the jury in
 10 photographic and 3D forms.
 11

12 The van has outlived its useful evidentiary life. The Court can preserve
 13 its remaining value to its current and future owners by granting this Motion
 14 and/or by setting a deadline for further inspection of the van (potentially
 15 including Ms. McLaughlin in No. 2:24-CV-00286-MKD, which is set for a
 16 Scheduling Conference on October 21, 2024, at 1:30 p.m.) For these reasons,
 17
 18

19 ² ““Viewings”” are time-consuming, difficult to record, and present a risk the
 20 jury may see or hear something improper. As a result, courts are often
 21 reluctant to order a view *unless convinced* it is crucial to the moving party's
 22 case.” E. Jury Views, Rutter Group Prac. Guide Fed. Civ. Trials & Ev. Ch.
 23 8C-E (italics in original).

24 DEFENDANT CITY OF SPOKANE'S REPLY TO
 PLAINTIFFS' OPPOSITION TO DEFENDANT'S
 MOTION TO RELEASE VAN TO OWNER - 3
 2:24-cv-00189-MKD

1053-00014/711558

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and for the reasons set forth in the City's original moving papers, the City
1 respectfully renews its request for the Court to grant this Motion.

2 Because the outcome of this Motion does not depend on (or relate to)
3 whether the police shooting was justified, the City declines to engage in a
4 rebuttal of the representations made by Plaintiffs in their Response regarding
5 the shooting. That will be coming soon enough in the form of Defendants'
6 summary judgment motion.

7
8
9 DATED: October 2, 2024

10
11 KEATING, BUCKLIN & McCORMACK, INC., P.S.
12

13 By: /s/ Brian C. Augenthaler
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DEFENDANT CITY OF SPOKANE'S REPLY TO
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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Attorneys for Plaintiffs

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DATED: October 2, 2024

/s/ Lindsey E. Martin
Lindsey Martin, Legal Assistant

DEFENDANT CITY OF SPOKANE'S REPLY TO
PLAINTIFFS' OPPOSITION TO DEFENDANT'S
MOTION TO RELEASE VAN TO OWNER - 5
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